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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JASON BITZ, Defendant and Appellant.	B223608 (Los Angeles County Super. Ct. No. NA083514)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gary J. Ferrari, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon and Sharlene A. Honnaka, Deputy Attorneys General, for Plaintiff and Respondent.

Jason Bitz was convicted of possession of methamphetamine and appeals the denial of his motion to suppress evidence. We affirm.

FACTS

Bitz was stopped on September 29, 2009, by Officers Scott Miller and Matthew Whybrew for running a stop sign on his motorized scooter in Long Beach. When he got off his scooter, Miller patted him down for weapons but did not find anything. The officers then asked Bitz to stand in front of the police cruiser with his hands on the push bar. While Miller obtained his identifying information and ran his name in the computer, Bitz told Whybrew that he did not have anything illegal on him. Whybrew asked if he could check; Bitz shrugged and said, "Okay." Whybrew then found a small baggie containing a white crystal-like substance which he believed to be methamphetamine in Bitz's pocket. Bitz was handcuffed and read his *Miranda*[1] rights. Bitz told Officer Whybrew that he had purchased the methamphetamine for $10 and he was going to give it to someone. The officers discovered Bitz was on active parole after he was handcuffed and sitting in the police cruiser.

Bitz moved to suppress evidence of the methamphetamine at the preliminary hearing and renewed the motion in the superior court. When his motion was denied, Bitz waived his constitutional trial rights, acknowledged the consequences of a plea, and pled nolo contendere to one felony count of possessing methamphetamine under Health & Safety Code section 11377, subdivision (a). He also admitted he suffered one prior strike conviction and two prior felony convictions. (Pen. Code, § 667.5, subds. (b)-(i), 1170.12, subds. (a)-(d).) Probation was denied and Bitz was sentenced to the low term of 16 months in state prison. The prior convictions were stricken for purposes of sentencing. Bitz timely appealed.

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436.

DISCUSSION

The sole issue on appeal is whether the motion to suppress was properly denied. At the preliminary hearing, the judge found the initial pat down search "not justified[,]" but nevertheless found "the search to be valid. The defendant gave consent. There was nothing—force used in the sense that made any of this involuntary. If he doesn't know the law, and didn't know he could say, 'no," that's one thing. But even that would not invalidate[] the consent. He could have said, 'No,' and he didn't." When the motion was renewed before the superior court at the pretrial hearing, the trial court refused to hear the motion again, but stated, "I read the preliminary hearing transcript and if I were to decide it, I would decide it exactly as Judge Meyer did."

Bitz contends the trial court erred when he denied the motion because the search which resulted in the discovery of the methamphetamine was inextricably bound with the unconstitutional pat down. As a result, Bitz's consent was not voluntary. We need not reach this issue, however, because we find that the inevitable discovery doctrine applies in this situation.[2] The inevitable discovery doctrine applies when, despite illegal police action, the challenged evidence would have been eventually obtained in the normal course of a lawful investigation. (*Nix v. Williams* (1984) 467 U.S. 431, 448; *People v. Clark* (1993) 5 Cal.4th 950, 993.)

Bitz argues that he "was only stopped for a minor traffic infraction and given that the unconstitutional patdown [*sic*] provided no additional evidence against Bitz, it is reasonably probable that the officers simply would have cited and released Bitz, without waiting to verify whether he was on probation or parole, had Detective Whybrew not unconstitutionally searched him." A clearer reading of the record shows, instead, that the officers had no intention of citing Bitz and letting him go.

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[2] Although the inevitable discovery doctrine was not argued to the court at the preliminary hearing or at the hearing for renewal, it may be applied on appeal if the factual basis for the theory is fully set forth in the record, as it is here. (*People v. Robles* (2000) 23 Cal.4th 789, 801, fn. 7.)

Whybrew testified that approximately two minutes elapsed between the time they initially stopped Bitz and the discovery of the methamphetamine in his pocket. Whybrew further testified that after the initial patdown and before the search, his partner went to the police cruiser to run Bitz's name in the computer. The officers' actions show that they had no intention of releasing Bitz with a citation without first checking his status. Instead, they continued to detain Bitz after the initial patdown and asked him to move away from his scooter. The officers would inevitably have discovered Bitz's status as a parolee and then searched him. It is undisputed that the police had every right to subject Bitz to a warrantless search since he was on parole. (*People v. Viers* (1991) 1 Cal.App.4th 990, 993.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.